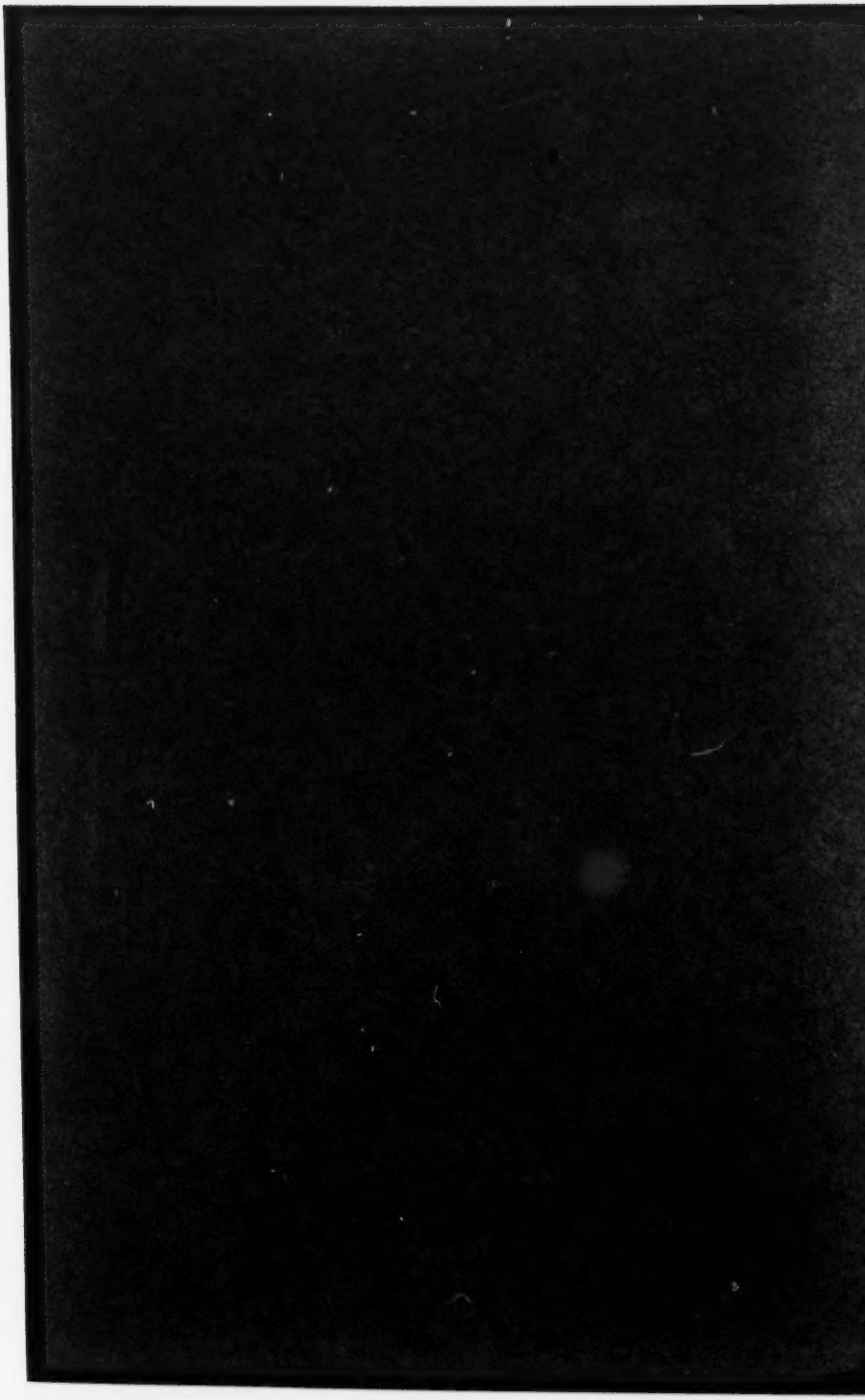

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131301—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 751

WILLIAM H. TAYLOR, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 12) is not reported. The opinions of the Circuit Court of Appeals (R. 15–20) are reported in 122 F. (2d) 714.

JURISDICTION

This case involves gift taxes for the year 1935 in the amount of $3,040.78 (R. 12). The judgment of the Circuit Court of Appeals was entered August 22, 1941 (R. 21). The petition for a writ of

certiorari was filed November 21, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The taxpayer transferred property in trust, directing the trustee to accumulate the income therefrom during the minority of the four beneficiaries, but authorizing him to apply such of the income for their support and education as he might deem expedient. Did the taxpayer thereby make "gifts of future interests in property" under Section 504 (b) of the Revenue Act of 1932, or were there four gifts of present interests, warranting four exclusions of $5,000 each?

STATUTES AND REGULATIONS INVOLVED

Revenue Act of 1932, c. 209, 47 Stat. 169:

> SEC. 501. IMPOSITION OF TAX.
>
> (a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift.
>
> (b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a nonresident not a citizen of the United States, shall apply to a

transfer only if the property is situated within the United States. The tax shall not apply to a transfer made on or before the date of the enactment of this Act.

* * * * *

(U. S. C., Title 26, Sec. 550.)

SEC. 504. NET GIFTS.

(a) *General Definition.*—The term "net gifts" means the total amount of gifts made during the calendar year, less the deductions provided in section 505.

(b) *Gifts Less Than $5,000.*—In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year, the first $5,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.

(U. S. C., Title 26, Sec. 553.)

Treasury Regulations 79 (1936 Ed.):

ART. 11. *Future interests in property.*—No part of the value of a gift of a future interest may be excluded in determining the total amount of gifts made during the calendar year. "Future interests" is a legal term, and includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commerce in use, possession, or enjoyment at some future date or time. * * *

STATEMENT

During 1934, the taxpayer executed an instrument of trust and transferred certain securities to the trustee thereunder. The trustee was directed to divide the principal into four equal shares, one for each of the four children of the taxpayer's brother. The income was to be accumulated for each beneficiary until he or she reached the age of 21. Each child, upon attaining the age of 21, was to receive the income from his or her portion for life. The trustee was authorized to apply any part of the income or accumulated income for the education or support of any of the children during minority if he deemed it expedient (R. 3–4).

During the year 1935, the taxpayer transferred additional securities to the trust, and it is this gift which is involved in the instant proceeding (R. 11). When these additional securities were conveyed, the four beneficiaries of the trust were all under 21 (R. 12).

In his gift tax returns the taxpayer excluded the sum of $5,000 for each beneficiary of the trust. The Commissioner asserted a deficiency on the ground that no exclusions were allowable (R. 11).

The Board of Tax Appeals sustained the taxpayer's contention, and allowed four exclusions (R. 12–13). The Circuit Court of Appeals reversed [1] (R. 21).

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[1] In the course of the proceedings before the Board of Tax Appeals the Commissioner conceded that one exclusion was

ARGUMENT

1. Petitioner alleges conflicts with *Rheinstrom* v. *Commissioner,* 105 F. (2d) 642 (C. C. A. 8th), and *Commissioner* v. *Krebs,* 90 F. (2d) 880 (C. C. A. 3d). But both those cases were decided prior to the decisions of this Court in *Helvering* v. *Hutchings,* 312 U. S. 393; *United States* v. *Pelzer,* 312 U. S. 399, and *Ryerson* v. *United States,* 312 U. S. 405, which finally established the rules to be applied in cases of this type. And the *Rheinstrom* decision was one of those constituting the conflict which led to the granting of certiorari in those cases. 312 U. S. at 395. There is therefore no present basis for certiorari.

The court below correctly relied upon this Court's decision in the *Pelzer* case where, as here, the income was to be accumulated for a period of years. The discretion lodged in the trustee to pay or withhold income leaves uncertain the amount of income that the beneficiaries will receive during the year, and consequently the use, possession and enjoyment is postponed to the happening of a future uncertain event, namely, the exercise of the trustee's discretion. The court below was right in

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allowable on the theory that the donee of the gift was the trustee (R. 11–12). This position was held incorrect in *Helvering* v. *Hutchings,* 312 U. S. 393. In the Circuit Court of Appeals, the Commissioner changed his position and argued that the gifts were all future interests, but agreed that one exclusion should be allowed in accordance with the concession made before the Board (R. 19).

holding that the gifts were "future interests" as that term was used in the Act and defined by this Court.

2. Petitioner cites three decisions of District Courts arising in three different circuits to demonstrate that confusion exists respecting the application of the term "future interests" to the facts of individual cases. *Noyes* v. *Hassett,* 20 F. Supp. 31 (Mass.); *Wieboldt* v. *United States,* decided by the Northern District of Illinois June 8, 1940, not officially reported but found in 1940 C. C. H., Vol. 4, par. 9539; *Kinney* v. *Anglim,* decided by the Northern District of California September 18, 1941, not officially reported but found in C. C. H. Federal Inheritance, Estate and Gift Tax Service, par. 10,100. However, even if the decisions in these cases do conflict with the decision below, which is not certain, they still do not indicate the existence of conflicting rules among the circuits, and there is convincing evidence to the contrary. *Noyes* v. *Hassett* arose in the First Circuit, where the Circuit Court of Appeals has decided two cases since this Court's decisions in the *Hutchings, Pelzer,* and *Ryerson* cases, and both are in accord with the rules established therein. *Welch* v. *Paine,* 120 F. (2d) 141; *Commissioner* v. *Brandegee,* 123 F. (2d) 58. In the latter case, the court cited with approval the decision below in the instant case. *Wieboldt* v. *United States, supra,*

is now pending on appeal before the Circuit Court of Appeals for the Seventh Circuit,[2] which, in *Commissioner* v. *Glos* (*Gloss*), decided November 14, 1941, not yet officially reported but found in C. C. H. Federal Inheritance, Estate and Gift Tax Service, par. 10,106, cited with approval the decision of the court below herein. *Kinney* v. *Anglim supra,* arose in the Ninth Circuit, where the Circuit Court of Appeals on October 23, 1941, decided *Commissioner* v. *Boeing* (not yet officially reported but found in C. C. H. Federal Inheritance, Estate and Gift Tax Service, par. 10,104), and cited with approval the decision below in the instant case.

There is no present confusion, and since the decisions of this Court in the *Hutching, Pelzer,* and *Ryerson* cases, the circuit courts of appeals have followed a consistent course of decision on these questions. See *Helvering* v. *Blair,* 121 F. (2d) 945 (C. C. A. 2d); *Commissioner* v. *Barbour,* 121 F. (2d) 728 (C. C. A. 3d); *Welch* v. *Paine,* 120 F. (2d) 141 (C. C. A. 1st); *Hopkins* v. *Magruder,* 122 F. (2d) 693 (C. C. A. 4th); *Commissioner* v. *Glos* (*Gloss*) (C. C. A. 7th), *supra; Commissioner* v. *Boeing* (C. C. A. 9th), *supra; Commissioner* v. *Brandegee* (C. C. A. 1st), *supra.*

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[2] Also pending before that court is a companion case, *Wieboldt* v. *United States*, decided the same day, not officially reported but found in 1940 C. C. H., Vol. 4, par. 9538.

CONCLUSION

The decision below is correct and there is no conflict. The petition should be denied.

Respectfully submitted.

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DECEMBER, 1941.

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